

HIGH COURT OF CHHATTISGARH, BILASPUR

MA No.23 of 2014

1. Nestor Ekka S/o Marshal Ekka Aged About 50 Years R/o Qtr. No. N E-67, Chhattisgarh Electricity Board Colony (Cseb Colony), Patharri Para- Korba East, Tah. And Distt. Korba C.G.
2. Smt. Bijit Ekka W/o Nestor Ekka Aged About 48 Years R/o Qtr. No. N E-67, Chhattisgarh Electricity Board Colony (Cseb Colony), Patharri Para- Korba East, Tah. And Distt. Korba C.G.

---- Appellants

Versus

1. Promod Kumar Singh S/o Awadhesh Singh Aged About 23 Years R/o House No.99 Ward No. 13, Chhattisgarh Electricity Board Colony, (CSEB Colony), Patharri Para-Korba East, Tah. And Distt. Korba C.G.
2. Awadhesh Singh S/o Nagina Singh Aged About 50 Years R/o House No. 99, Ward No. 13 Chhattisgarh Electricity Board Colony (CSEB Colony), Patharri Para Korba East, Tah. And Distt. Korba C.G.
3. The Oriental Insurance Company Thru- Divisional Manager, Branch Office- Korba, Tah. And Distt. Korba C.G.

---- Respondents

For Appellants	:	Shri Sanjay Kumar Patel, Advocate
For Respondent No.3	:	Ms. Vineeta Tiwari, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

08/01/2016

This appeal arises out of order dated 18-11-2013, by which, the Court below has rejected the application for condonation of delay in filing application under Order 9 Rule 9 CPC.

2. Claim application of the applicants was dismissed on 01-05-2013 for want of prosecution. Certified copy of the order was obtained on 26-06-2013 and application under Order 9 Rule 9 CPC for restoration was filed on 28-06-2013. As there was some delay, an application for condonation of delay under Section 5 of the Limitation Act was also filed. The learned Court below has, however, rejected the application for

condonation of delay holding that the delay was not properly explained.

3. Brief submission of learned counsel for the appellants is that it was a case of motor accident claim. On the date, when the evidence was recorded, the counsel could not remain present and the claim application was dismissed for want of prosecution. The parties had no notice or knowledge. The certified copy of the order was obtained on 26-06-2013 and immediately thereafter, on 28-06-2013, restoration application under Order 9 Rule 9 CPC was filed. The delay was therefore bonafide. The Court below while rejecting application for condonation of delay, has adopted hyper-technical approach.

4. On the other hand, learned counsel for the respondent No.3 submits that the Court below has rightly rejected the application for condonation of delay because each days delay has not been properly explained.

5. After hearing learned counsel for the parties, I am of the view that the Court below has adopted hyper-technical approach while rejecting application for condonation of delay of short period in filing application for restoration of claim application ignoring that it was a case of claim arising out of an accident. The delay was not so much so which deserve rejection of application for condonation of delay, depriving the applicants of hearing on merits of his claim application.

6. Order of the Court below is not sustainable in law, and therefore, set aside. The Court below shall consider the application under Order 9 Rule 9 CPC on its own merits. Records of the Court below be remitted forthwith. The parties shall appear before the Claims Tribunal at Korba on 25-02-2016, on which date, and thereafter, the Claims Tribunal shall proceed with the matter in accordance with law.

7. Accordingly, the petition is allowed.

Sd/-
Manindra Mohan Shrivastava
Judge